Great Southern Fire Protection, Inc. *and* Road Sprinkler Fitter Local Union No. 669, U.A., AFL–CIO. Case 10–CA–27871

November 7, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On April 9, 1997, Administrative Law Judge Lawrence W. Cullen issued the attached decision. The Respondent filed exceptions and a supporting brief. The National Labor Relations Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Great Southern Fire Protection, Inc., Pelham, Alabama, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

''Furnish to the Union in a timely manner the information requested by the Union on June 24, 1994, and August 11, 1994.''

2. Substitute the following for paragraph 2(e).

''Within 14 days after service by the Region, post at its facility in Pelham, Alabama, copies of the attached notice marked 'Appendix.'[3] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 15, 1994.''

Lesley A. Troope, Esq., for the General Counsel.
Jay St. Clair, Esq. and *John J. Coleman, Esq. (Bradley, Arant, Rose & White)* of Birmingham, Alabama, for the Respondent.
David B. Lewis, Business Agent, of Royston, Georgia, and *Michael Hayes*, Business Agent, of Dora, Alabama, Road Sprinkler Fitter Union, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard before me on April 24, 1996, in Birmingham, Alabama, pursuant to a complaint issued by the Regional Director of Region 10 of the National Labor Relations Board (the Board) on January 9, 1995. The complaint is based on a charge filed by Road Sprinkler Fitter Local Union No. 669, U.A., AFL–CIO (the Union) on August 23, 1994. The complaint alleges that Respondent, Great Southern Fire Protection, Inc. violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) since on or about June 24 and August 11, 1994, by refusing to furnish to the Union information which was necessary and relevant to the Union's ability to negotiate a collective-bargaining agreement on behalf of the employees in the appropriate bargaining unit and by unilaterally, and in the absence of a good-faith collective-bargaining impasse in contract negotiations, making changes in the terms and conditions of employment affecting unit employees. The complaint is joined by the answer filed by the Respondent on January 23, 1995, wherein it has denied committing any violations of the Act.

Upon the entire record in this proceeding, including my observations of the witnesses who testified herein, and after due consideration of the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. JURISDICTION

A. *The Business of Respondent*

The complaint alleges, Respondent admits and I find that at all times material herein Respondent has been a Georgia corporation with an office and place of business located in Pelham, Alabama, where it is engaged in the nonretail installation and servicing of fire protection systems in the construction industry, that during the past calendar year, a representative period, Respondent purchased and received at its Alabama construction sites materials and supplies valued in excess of $50,000 directly from points outside the State of Alabama and that Respondent is and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

[1] In affirming the judge's finding that the Respondent's commission of unfair labor practices during the course of bargaining precludes it from being able to assert the existence of impasse, we rely on the Board' s established principle that an employer may not raise this defense if the purported impasse is reached in the context of serious unremedied unfair labor practices that affect the negotiations. See *Noel Corp.*, 315 NLRB 905, 911 (1994), enf. denied on other grounds 82 F.3d 1113 (D.C. Cir. 1996). As set forth in the judge's decision, we also affirm his finding that the parties did not, in any event, bargain to impasse prior to the Respondent's unilateral implementation of new terms and conditions of employment.

[2] We have modified the Order to conform more closely to *I & F. Corp.*, 322 NLRB 1037 fn. 1 (1997).

B. *The Appropriate Unit*

The complaint alleges, Respondent admits, and I find that at all times material that all sprinkler fitters employed by Respondent, including apprentices, but excluding all other employees, guards, and supervisors as defined in Section 2(11) of the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

C. *The Labor Organization*

The complaint alleges, Respondent admits, and I find that at all times material, the Union has been, and is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

On March 19, 1991, the Respondent and the Union entered into an agreement whereby Respondent agreed to be bound by the 1988-1991 collective-bargaining contract between the Union and the National Fire Sprinkler Association (NFSA). The contract between the Union and NFSA was set to expire by its terms on March 31, 1991. The NFSA is an organization of sprinkler contractors that represents numerous contractors as their designated collective-bargaining representative in a national multiemployer bargaining unit. On March 13, 1991, Respondent had entered into an assent and interim agreement whereby Respondent agreed to be bound by the newly negotiated and later executed April 1, 1991 contract between the Union and NFSA. In both the March 13 and 19 agreements Respondent agreed to be bound as an independent signatory rather than as a member of the NFSA bargaining unit. In the March 13, 1991 assent and interim agreement, Respondent also acknowledged that it had verified the Union's status as the exclusive representative of Respondent's employees pursuant to Section 9(a) of the Act for purposes of bargaining for all journeyman sprinkler fitters, apprentices and preapprentices employed by Respondent. The 1991 collective-bargaining agreement expired by its terms on March 31, 1994. On November 22, 1991, the Respondent at the Union's request executed a document entitled ''Acknowledgment of the Union'' wherein Respondent confirmed that a majority of the sprinkler fitters in its employ had designated, were members of and were represented by the Union and unconditionally acknowledged and confirmed that the Union was the exclusive representative of these employees pursuant to Section 9(a) of the Act.

Respondent's President Dan Dotson sent a letter to the Union dated January 10, 1994, informing the Union of its intent to bargain independently of the NFSA for a successor contract to the 1991 contract set to expire by its terms on March 31, 1994. By its letter of January 18, 1994, the Union acknowledged Respondent's January 10 letter and informed Respondent that it would contact it to negotiate a new agreement. Subsequently, the Union and NFSA agreed to an extension of the 1991 contract and the Union offered the extension to Respondent but Respondent rejected this offer and the 1991 contract expired by its terms on March 31, 1994. Subsequently the Union and Respondent entered into negotiations for a successor agreement independently of the NFSA negotiations.

In late March 1994 according to the unrebutted testimony of David B. Lewis at the hearing, Local 669 was experiencing internal unrest which resulted in its placement under emergency trusteeship by the International. Tommy Pruett, the appointed trustee took over the Local's affairs including responsibility for collective bargaining. Pruett then negotiated and reached an agreement with NFSA that was concessionary providing for either frozen or reduced wage rates in many states, reduction in overtime rates from double overtime to time and a half and reductions in employer contribution rates to the supplemental pension fund and to the health and welfare fund and reductions in travel and subsistence pay. Lewis, the Local's business agent for District 8 encompassing the States of Georgia and South Carolina, was charged with responsibility for the negotiation of an agreement with Respondent and was assisted by the Local's business agent, Michael Hayes, who has responsibility for District 7 encompassing Alabama and Mississippi.

The parties met for their initial bargaining session on May 23, 1994, at a local motel. Lewis and Hayes attended on behalf of the Union and Respondent's attorney, Jay St. Clair, and one of its owners, Sam Logue, attended on behalf of Respondent. This was a preliminary informal session with neither party submitting any contract proposals. The Respondent stated it needed economic relief and specifically cited the travel article which provides subsistence payments for employees on travel status. The Union suggested that Respondent go through the expired agreement and explain its difficulties with the agreement. St. Clair who acted as the Respondent's chief spokesman inquired of Lewis as to whether he had authority to negotiate a different contract than the then recently executed national agreement and Lewis assured him he had such authority and that everything was negotiable. Respondent stated it would prepare proposals and contact the Union for further bargaining. At this meeting the Union asked Respondent how many employees it had working and Logue responded that he did not know but would find out and provide this information to the Union later.

The Respondent did not contact the Union. The parties agreed at the hearing that there was a delay in negotiations because Respondent's then President Dotson was working on a project out of the country. By his letter to Respondent of June 24, 1994, on behalf of the Union, Lewis noted that the Respondent had not contacted it to set a date for another bargaining session as it had promised to do, and requested that the Respondent contact the Union to set another meeting for negotiations. In his letter Lewis also requested that the Respondent provide the Union ''with a list of names and addresses of all persons performing bargaining unit work for your organization since April 1, 1994,'' and requested that for each of the individuals listed, the Respondent indicate their wage rates or apprentice status.

On July 21, 1994, a second bargaining session was held although the Respondent had still not provided the information requested by the Union. Lewis and Hayes attended on behalf of the Union and St. Clair and then President Dotson attended on behalf of the Respondent. At this meeting the Respondent offered some proposals but did not present a complete proposal to the Union. St. Clair told the union representatives that this was only a beginning proposal and was not complete. Lewis asked if the Union was to make counter offers to each sentence of Respondent's proposal and St. Clair said no, that the articles should stand as they were. St. Clair said that if the Union was not willing to negotiate to

let them know and Lewis replied that the Union was willing to negotiate but did not have a proposal on wages to counter. The parties discussed various contract articles and reached agreement on some articles and the Union said they would make a counteroffer on others. The union representatives told Respondent's representatives that they would get back to them. St. Clair said Respondent would bring more proposals to the next meeting. The parties agreed to meet again on August 18, 1994. At the close of the meeting Lewis asked if Respondent had received the Union's request for a list of employees and their current jobs. Dotson (who had been out of the country) said he did not know what Lewis was talking about. St. Clair asked why the Union had requested this information. Lewis replied that he might want to talk to the employees. St. Clair said he would get the information to the Union ''promptly.''

As of August 11, 1994, Respondent had still not complied with the Union's request for information by the Union's June 24 letter and by Lewis' verbal request at the July 21 meeting. Additionally, the Union had learned that Respondent had ceased making the contributions to the National Automatic Sprinkler Industry (NASI) welfare fund and pension fund which were required under the terms of the expired April 1, 1991–March 31, 1994 contract. By its certified letter of August 11 Lewis reminded the Respondent of the outstanding information requests and again requested the information. Lewis also wrote that the Union had learned of Respondent's failure to make the fund contributions and stated that the Union objected to any unilateral changes in ''wages, hours, benefits, and other terms and conditions set forth in the expired agreement'' and also requested that Respondent rescind any changes retroactive to the dates they were made. Respondent failed to respond to this letter. Logue testified and Respondent's position letter to the Board concedes that the Respondent ceased making the required contributions to these funds in August 1994. Logue acknowledged and Lewis also testified that Respondent did not notify the Union of these changes.

The parties met again on August 18, 1994, with Lewis and Hayes representing the Union and St. Clair and Logue representing the Respondent. Dotson was no longer a partner in Respondent's business and was not present, having left in late July or early August according to the testimony of Logue. At this meeting the Respondent presented the Union with a list of the names and telephone numbers of its employees although there had been no request for the telephone numbers and otherwise failed to comply with the Union's information request for the addresses, job classifications, and wage rates of the employees. Lewis renewed this information request at this meeting and also asked for the employees' job locations. St. Clair said he did not want the employees stopped from working and Lewis said he had no intention of doing so and would go to the Labor Board if necessary. St. Clair told him he had a ''pissed off'' attitude. Lewis testified he needed this information in preparing proposals for negotiations including wage proposals and proposals concerning Respondent's requested modification of the travel allowance article.

At the August 18 meeting, agreement was reached by the parties on several articles of the Union's proposals with disagreement on others and counteroffers made by Respondent and discussion on others. At the outset of the meeting after discussion of the information request, St Clair stated he wanted a complete union contract proposal and Lewis stated that a partial proposal was on the table. St. Clair said the Respondent would counter the Union's proposal that night and wanted a contract that night or to determine if the Union was not trying to get a contract. He asked for all of the Union's proposals and Lewis replied the Union did not have enough proposals to reach an agreement that night. St. Clair again asked if Lewis had the authority to reach a binding agreement and Lewis replied, ''I think so.'' During the course of the meeting one of Respondent's proposals was to delete the 9(a) language from the agreement. Near the end of the meeting St. Clair wrote some of the Respondent's proposals on a blackboard including a proposal for Blue Cross/Blue Shield Health insurance coverage made for the first time and without any documentation of this plan, a proposal for the complete elimination of all pension benefits, and NASI fund contributions and a proposed wage rate of less than half that provided under the expired labor agreement and stated that these changes would be ''effective immediately.'' Lewis stated that he wanted further negotiations on economics and again objected to any changes in the terms and conditions of employment of the bargaining unit employees. The parties set another meeting for August 30, 1994. No one at the August 18 meeting made any statement asserting that there was an impasse in negotiations. Both Lewis and St. Clair testified they did not believe the parties were at an impasse at this meeting.

On August 30, the parties met again for the fourth and final bargaining session. The Respondent had still not furnished the Union with the information requested and had not done so by the time of the hearing in this case. The same representatives were present for both parties. The Union presented a complete contract proposal to Respondent and the parties discussed their proposals, with some agreement and counterproposals offered. At that session the Respondent informed the Union that it had implemented changes in the wages and benefits of the bargaining unit employees effective August 18. Lewis objected on behalf of the Union. The Union made some concessions on its wages and benefit proposals to Respondent but the Respondent did not respond to these proposals. The Union requested another meeting to negotiate further and Respondent refused and stated it had presented and implemented its final offer. At no time during this meeting did the Respondent declare an impasse.

Respondent's owner and President Sam Logue testified that Dan Dotson was the original owner of Respondent until Logue became a partner in November 1991 with a 40-percent share of the stock held by both he and Dotson and 20-percent held by the Company until March or April 1992 when Jerry Rauch joined the Company and received the 20-percent share of the stock held by the Company. Dotson ran the business end of the office and sold also. Logue worked as a sales representative of large jobs and oversaw the jobs to see that they were performed correctly and to see that they were properly manned and that the necessary material was delivered to the jobsites. Rauch handled what Logue termed ''daywork'' which is the business generated by the breakdown of existing sprinkler systems and the resulting need for repair. In early 1992 there were 10 employees in addition to the 3 owners. In March or April 1994 Rauch left Respondent and sold his interest back to the Company. When he left he

took a substantial share of the business (30 percent) with him that he had developed and handled. Subsequently in late July or early August 1994, Dotson left and sold his interest in the Company to Logue and also took a substantial share of business (30 to 40 percent) with him leaving according to Logue only a small residual of business left requiring only one or two sprinkler fitter employees to handle it. This loss of business also affected the Company's cash-flow and it was reduced to paying its bills from the receipt of payment from one contractor to another as most of the jobs were performed for contractors who do not typically pay until 30 to 90 days after the work is completed. According to Logue the Respondent thus faced a financial crisis which had been broached with the union representatives in the initial meeting at which Logue and Dotson had told the Union the Respondent needed relief from the cost of paying into the Union's health and welfare funds and pension funds and the travel expenses required under the terms of the existing labor agreement.

Contentions of the Parties

The General Counsel and Charging Party contend that Respondent adopted a ''take it or leave it'' strategy in these negotiations ''designed to frustrate and preempt good-faith bargaining after only two substantive bargaining sessions, and without even declaring an impasse and in the face of its own refusal to provide the Union with the requested relevant and necessary information about bargaining unit employees.''

With respect to the failure to provide the requested information the General Counsel and the Charging Party argue that the Union requested in written form and orally the number and identity of the bargaining unit employees and their addresses, journeyman or apprentice status, wage rates, and a list of the jobsites where they were performing work, all of which were presumptively relevant and necessary to the Union's negotiation of a successor contract with Respondent, citing *Excel Fire Protection Co*., 308 NLRB 241, 247 (1992). They argue further that Respondent's failure and refusal to provide this information constitutes an independent violation of Section 8(a)(5) and (1) of the Act and ''also demonstrates Respondent's over all bad faith and precludes the existence of a valid impasse in negotiations,'' citing *United Stockyards Corp.*, 293 NLRB, 1, 3 (1989); *Crane Co.*, 244 NLRB 103, 111 (1979), and *Palomar Corp.*, 192 NLRB 592, 598 (1977), enfd. 465 F.2d 731 (5th Cir. 1972). With respect to the unilateral changes in wages and benefits the General Counsel and Charging Party assert the principle that ''after a collective-bargaining agreement expires, an employer is obligated to maintain the status quo of all mandatory subjects of bargaining until the parties reach either a new agreement, or a bona fide impasse in negotiations,'' citing *Laborers Health and Welfare Trust v. Advanced Lightweight Concrete*, 484 U.S. 539 (1988); *NLRB v. Katz*, 369 U.S. 736, 743–748 (1962), and *Jo-Vin Dress Co.*, 279 NLRB 525 (1987), enfd. 819 F.2d 1134 (3d Cir. 1987).

The General Counsel and the Charging Party argue that after only two substantive bargaining sessions the Respondent implemented unilateral changes in the terms and conditions of employment of the bargaining unit employees which included ''Blue Cross/Blue Shield health insurance with a differing percentage for employee contributions, a new wage scale, a cessation of contributions to NASI funds and, an elimination of a pension plan.'' They note inconsistencies in Respondent's position wherein Respondent contended at the hearing that it was privileged to implement these changes in the mandatory subjects of bargaining because the parties had reached an impasse in negotiations whereas Respondent's counsel St. Clair testified at the hearing that he ''did not believe an impasse was reached until the August 30, 1994 bargaining session—almost two weeks after the Respondent acted unilaterally.'' They argue that Respondent implemented its proposals, ''some of which like the Blue Cross/Blue Shield insurance had not been previously presented to the Union for consideration, and then Respondent walked away from the bargaining table.''

The General Counsel and the Charging Party note that the burden of proof of ''the existence of a bona fide impasse rests with the party asserting the impasse'' citing *Taft Broadcasting Co.*, 163 NLRB 475 478 (1967), affd. *American Fed. of Television & Radio Artists v. NLRB*, 395 F.2d 622 (D.C. Cir. 1968), wherein the Board ''found the following factors to be relevant to the impasse issue:

> (1) the bargaining history;
> (2) The contemporaneous understanding of the parties as to impasse and the state of negotiations;
> (3) the good faith of the parties
> (4) the length of negotiations; and
> (5) the importance of the issue or issues at to which there is disagreement.''

The General Counsel and the Charging Party also cite *Circuit-Wise*, 309 NLRB 918 (1992), for the principle that the finding of an impasse presupposes that the parties have acted in good faith. They also cite *Francis J. Fisher, Inc.*, 289 NLRB 815 820 (1987), citing *Wayne's Dairy*, 223 NLRB 260, 265 (1976), wherein the Board stated, ''an employer may not parley an impasse resulting from its own misconduct into a license to make unilateral changes.'' They argue that in the instant case Respondent implemented unilateral changes despite objection by the Union ''after only two substantive negotiating sessions and while the parties were still exchanging proposals and making concessions, including economic concessions.'' They further note that ''as of August 18, 1994, when the Respondent announced that it was immediately implementing changes in employee health insurance, wages and pension, Respondent was four months in arrears in making contributions to the NASI benefit funds, and had ceased making fringe benefits contributions as of August 1, 1994.'' They argue that this premature implementation of unilateral changes in fringe benefits effective August 1, 1994, and in wages effective August 18, 1994, precluded a legitimate impasse citing *Intermountain Rural Electric Assn*., 305 NLRB 783, 784–786 (1991), enfd. 984 F.2d 1562 (10th Cir. 1993).

The Respondent contends in its brief that as a result of the unique nature of the Union's status as a national local union wherein it negotiates nationwide agreements with the NFSA multiemployers bargaining unit, it rigidly imposes the same terms negotiated with NFSA on nonmember signatory employers, and thus the Union adopted an inflexible position which made further bargaining futile and gave rise to the existence of a valid impasse fully justifying Respondent's implementation of its proposals in view of the immediacy of its

need for economic relief and the inability of Respondent to convince the Union's chief negotiator Lewis to continue negotiations at the August 18 and August 30 meetings.

With respect to its economic condition the Respondent relies on the testimony of its president and sole owner, Logue, that at the end of July or first of August Dotson also left and took 30 to 40 percent of the business. The Company had only two or three employees and cash-flow ''was down to nothing'' and Logue almost had to ''close the door.'' With respect to the course of negotiations, Respondent notes that the Union's first offer was by a form letter dated March 16, 1994, to ''all independent contractors'' stating that the Union would sign a contract with Respondent identical to that negotiated with the NFSA. The first bargaining session in May 1994, when Lewis and Hayes on behalf of the Union met with Dotson and Logue was a preliminary meeting wherein the parties exchanged pleasantries. At that meeting Dotson and Logue told the union representatives that the Company needed ''economic help.'' They also questioned the Union about the agreement reached with NFSA and the status of negotiations with Grinell which is the largest fire protection sprinkler company in the United States and which had withdrawn from the NFSA and was in the process of negotiating a separate contract with the Union. The Union's representative said that since the Company was ''the one with the problems with the contract,'' it should make a proposal. At the second bargaining session held on July 21, 1994, the Respondent presented specific contract proposals which the parties negotiated over and reached agreement on some. The next bargaining session was held on August 18, 1994, and the Respondent asked for a complete union contract proposal and although it was already 4-1/2 months past the contract expiration date in March, the union representatives said they did not have one. St. Clair asked Lewis if he had the authority to bind the Union to a contract and he replied, ''I think so.'' At that meeting the Company announced its need ''to implement emergency economic measures to survive, and specific proposals were made.'' The Union's notes reflect that its representatives were ''not prepared'' to bargain concerning health and welfare and pension contributions. The Union's notes reflect the Company offered to negotiate over these interim economic measures but the Union's representatives, refused to do so. At the August 30, 1994 bargaining session the parties negotiated on language issues and the Union presented its economic proposal which was more onerous than the one in the NFSA agreement. There was a caucus and after the caucus, the Respondent rejected the Union's demand that it continue participation in the NASI funds. Following a second caucus the Union's representatives stated there was no movement on articles 3, 5, 6, 9, 10, 14, 16, 17, 21, 22, 23, and 26. The Union dropped slightly its demand for contributions to the NASI funds but still required participation in them. After the Union made its proposal at this meeting, it asked whether Respondent was willing to change its position concerning health insurance and pension contributions and Respondent said it was not.

Respondent contends that at ''this point, it was clear that the parties simply were not going to reach agreement on the key issues of health insurance and pension contributions.'' The Union initially demanded a combined contribution of $6.35 per hour and lowered this demand to $6.10 per hour whereas the Respondent could obtain Blue Cross health insurance for less than 90 cents per hour and was unwilling to fund a pension contribution. Moreover the Union was insisting that the Respondent participate in the NASI funds, which demand Respondent would not meet.

Respondent also cites *Taft Broadcasting Co.*, supra, citing factors to be considered in determining whether a bargaining impasse exists, where the Board held that when it was clear that further bargaining on significant issues would be futile, it was not necessary to be deadlocked on every bargaining issue, but that unresolved issues must be significant and also cites *Georgia-Pacific Corp.*, 305 NLRB 112 (1991).

Respondent argues that impasse was reached prior to or at the final bargaining session on August 30. It contends the Union engaged in a facade to superficially comply with bargaining when it had no intent to deviate except in the slightest manner from the agreement reached with NFSA. It cites the Union's economic proposals at the August 30 meeting when the Union's initial proposal was a $1.50-per-hour wage increase, spread over 3 years with a 50-cent-per-year raise which was revised downward to a 1-per-hour increase whereas the agreement negotiated with the NFSA provided for a 55-cent-per-hour increase for the life of the contract, which offer had been made to Respondent in March 1994. The Union's position was taken after the Company had announced it was seeking significant economic concessions. Respondent also contends that the Union's position on health insurance is significant in demonstrating that the Union was merely delaying bargaining by initially proposing hourly contributions of $4.50 an hour starting April 1, 1994; $4 an hour starting January 1, 1995; and $3.90 an hour starting January 1, 1996, whereas the contract negotiated with the NFSA on April 8, 1994 provided for a contribution of $3.75 in 1994 which dropped to $3.40 effective January 1, 1995. Respondent thus argues that since the Respondent had rejected the Union's ''master'' contract negotiated with NFSA in March 1994, the Union entered bargaining with Respondent with higher demands than previously made by it, demonstrating that the Union's strategy was to negotiate down to its offer of several months before. Respondent contrasts this situation with its economic plight wherein it needed significant concessions since the loss of two partners and over 60 percent of its business and contends that the reality of this situation was that the parties were at an impasse at least by August 30, 1994. ''To hold otherwise contemplates an endless quest,'' citing *Georgia-Pacific Corp.*, supra at 120.

Respondent argues further that the implementation of economic changes prior to August 30, 1994, was lawful as they fell within the exceptions recognized in *Bottom Line Enterprises*, 302 NLRB 373 (1991), to the general rule that when parties are engaged in negotiations for a collective-bargaining agreement, the employer may not implement changes absent overall impasse. The Respondent contends that rule does not apply in the instant case as the Union engaged in tactics designed to delay bargaining and that economic exigencies compelled prompt action citing *Bottom Line* at 374 and *RBE Electronics of S.D.*, 320 NLRB 80 (1995). Respondent argues that when ''the Company refused in March 1994 to sign an 'assent' to the contract negotiated with the NFSA, the Union came to the bargaining table with proposals more onerous than those contained in that agreement.'' Respondent argues that Respondent thus ''simply bargaining back'' to its original offer. Each bargaining session was concluded by the

Union rather than the Company as the Union's strategy was to drag out negotiations as the Company was required to continue under the terms of the expired contract, which terms were at least as favorable to the Union as those negotiated in the 1994 agreement. At this time the Company was in Logue's words within ''two inches of closing the door'' justifying the implementation of changes in economic terms and conditions while negotiations were ongoing, citing *RBE Electronics*, supra. Certainly the loss of Logue's two partners was ''an unforeseen occurrence, having a major economic effect [requiring the Company to take immediate action],'' citing *Hankins Lumber Co.*, 316 NLRB 837, 838 (1995), quoting *Angelica Healthcare Services*, 284 NLRB 844 (1987).

With respect to the failure to provide information, the Respondent contends the Union's request was a moving target noting the letter request of June 24, 1994, Logue's lack of recall of seeing this letter and the face to face discussion at the July 21, 1994 meeting of the request when Dotson returned to the country and told Union Representative Lewis he did not know what Lewis was talking about when asked by Lewis about the letter. The only information requested by the Union at this meeting was a roster of employees identifying what jobs they were assigned to. At the August 18, 1994 bargaining session the Company supplied the Union with a list of current employees and their telephone numbers which responded to the substance of the Union's request for information.

Analysis

I find that the Respondent violated Section 8(a)(5) and (1) of the Act by its failure to furnish the Union with the information requested by it in its letter of June 24 and its verbal request at the July 21 meeting. It is undisputed that the information was not supplied and I find no evidence to support the Respondent's position that the Union either withdrew its request or that the home telephone numbers and names of the employees were sufficient to satisfy the Union's request for information. I find that the information sought by the Union concerning the classifications of its employees and their wage rates and the location where they were working was both presumptively relevant and necessary to enable the Union to carry out its responsibilities as the collective-bargaining representative of the unit employees to negotiate and police the collective-bargaining agreement on their behalf. See the above cases cited by the General Counsel and the Charging Party which I find apply to this issue.

With respect to the unilateral changes in the terms and conditions of employment of the unit employees made by Respondent, I also find the Respondent violated Section 8(a)(5) and (1) of the Act. It is well established that changes in an expired collective-bargaining agreement and the resultant terms and conditions of the covered employees can only be made by agreement of the parties or by the imposition of the unilateral change after a valid impasse has occurred following good-faith bargaining by the parties in the absence of unfair labor practices. Here there was not a valid impasse as the unilateral changes did not occur in the absence of unfair labor practices as I have found that the Respondent violated Section 8(a)(5) and (1) of the Act by its refusal to furnish the information to the Union as requested which was relevant and necessary to enable the Union to bargain. Further, the Respondent violated Section 8(a)(5) and (1) of the Act by its failure to timely pay the June and July and August welfare and pension premiums into the funds and by the unilateral change of its insurance carrier to Blue Cross and withdrawal from the Union's welfare and pension plans and its discontinuance of the payment of travel expenses. I find that the Respondent adopted a take-it-or-leave-it stance with regard to each of these unilateral changes under the terms of the expired labor agreement, and failed to engage in good-faith bargaining. I further find that the Respondent has failed to establish by substantial evidence that such changes were lawful by reason of its economic plight. Logue's testimony without more is insufficient to establish the urgency of its economic condition. Moreover the Respondent appears from this record to have dragged its feet in attempting to address these problems in a timely fashion by devoting sufficient time and effort to resolve these matters. The record discloses that the Union was the party initiating additional negotiating meetings throughout the process. I find little support for Respondent's position that the Union was engaging in delay in order to continue to bind the Respondent to the expired labor agreement. I thus do not find that Respondent's implementation of the unilateral changes falls within the exceptions under *Bottom Line* and *RBE Electronics*. Rather I rely on the cases cited above by the General Counsel and the Charging Party and conclude that the Respondent violated Section 8(a)(1) and (5) of the Act by the implementation of the aforesaid unilateral changes in the bargaining unit's terms and conditions of employment. I further find that the Respondent has failed to establish that bargaining was at an impasse at the August 18 and 30 meetings.

III. THE EFFECTS OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The unfair labor practices as found in section II, above, in connection with the business of Respondent as found in section I, above, have a close intimate, and substantial relation to the trade, traffic and commerce within the meaning of Section 2(6) and (7) of the Act.

CONCLUSIONS OF LAW

1. Respondent is, and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union is the collective-bargaining representative for the following appropriate unit within the meaning of Section 9(a) of the Act:

> [A]ll sprinkler fitters employed by Respondent, including apprentices, but excluding all other employees, guards, and supervisors as defined in Section 2(11) of the Act.

4. Respondent violated Section 8(a)(5) and (1) of the Act by its failure and refusal to furnish the Union with the names and addresses and job classifications and wage rates and work locations of its unit employees.

5. Respondent violated Section 8(a)(5) and (1) of the Act by its unilateral changes of the terms and conditions of employment of its employees by ceasing to pay the NASI welfare premiums and pension fund contributions and travel ex-

penses and wages as required under the terms of the expired labor agreement.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices. I shall order that it cease and desist therefrom and take certain affirmative actions designed to effectuate the policies of the Act, including the posting of an appropriate notice.

Respondent shall furnish the Union with the aforesaid information it unlawfully failed and refused to provide as found herein.

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing to make contractually required contributions to the Union's NASI welfare fund and to the Union's pension and retirement fund on behalf of unit employees, I shall order the Respondent to make these employees whole by making all delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971). Respondent shall reimburse the unit employees for any losses it sustained by Respondent's unlawful unilateral changes in their wages and travel expenses in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950). Interest on all amounts shall be as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[1]

ORDER

The Respondent, Great Southern Fire Protection, Inc., of Pelham, Alabama, its officers, agents, successors, and assigns, shall[2]

1. Cease and desist from

(a) Refusing to bargain by refusing and failing to furnish the Union with the requested relevant information for purposes of fulfilling its role as the collective-bargaining representative of the unit employees as found herein.

(b) Refusing to bargain with the Union as the exclusive collective-bargaining representative of the unit employees by failing and refusing to make required contributions to the Union's NASI welfare fund and to the Union's NASI pension fund as found herein and by instituting unilateral changes in the unit employees travel expenses and wages as required by the terms of the expired labor agreement.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative actions necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order furnish the Union with the aforesaid information.

(b) Remit the required contributions to the Union's NASI welfare fund and pension fund, including any additional amounts owed the fund, and make whole the unit employees for any expenses ensuing from its failure to remit these contributions and from its unilateral changes in travel expenses and wages in the manner set forth in the remedy section of this decision.

(c) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit.

> [A]ll sprinkler fitters employed by Respondent, including apprentices, but excluding all other employees, guards, and supervisors as defined in Section 2(11) of the Act.

(d) Preserve and, within 14 days of any request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Pelham, Alabama, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that during the pendency of these proceedings the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail at its own expense a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 1994.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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[1] To the extent that an employee has made personal contributions to a fund that were accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund. *N. D. Peters & Co.*, 321 NLRB 927 (1996).

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY THE ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid and protection
> To choose not to engage in any of these concerted activities

WE WILL NOT refuse to bargain with Road Sprinkler Filter Local Union No. 669, U.A., AFL–CIO by refusing to furnish it with relevant and necessary information as the exclusive collective-bargaining representative of our unit employees and/or by unilaterally failing and refusing to remit required contributions to Road Sprinkler Filter Local Union No. 669, U.A., AFL–CIO's NASI welfare and pension funds and by unilaterally reducing the unit employees wages and travel allowances.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish to Road Sprinkler Fitlter Local Union No. 669, U.A., AFL–CIO the following relevant information: the names and addresses, job classifications wage rates and job locations of our unit employees.

WE WILL make the required contributions to the Road Sprinkler Fitter Local Union No. 669, U.A., AFL–CIO NASI welfare fund and pension fund, including any additional amounts due the funds.

WE WILL remit the unpaid contributions to the Road Sprinkler Fitter Local Union No. 669, U.A., AFL–CIO, funds, and WE WILL reimburse the unit employees for any expenses ensuing from our failure to make the required payments, and any losses incurrred from the reduction in travel expenses and wages with interest.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> [A]ll sprinkler fitters employed by Respondent, including apprentices, but excluding all other employees, guards, and supervisors as defined in Section 2(11) of the Act.

GREAT SOUTHERN FIRE PROTECTION, INC.